**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.138 OF 1994.**

Sunita Balkrishna Nigade .. Appellant
(Original accused )

vs.

The State of Maharahstra .. Respondent.
(Original Complainant)

Shri Kuldeep S. Patil, Advocate for the Appellant.

Smt.V.R.Bhosale,APP for the State.

**CORAM : S.S.PARKAR &**
**S.R.SATHE, JJ.**

DATED ; 1ST NOV., 2004.

**JUDGMENT (Per S.R.Sathe,J) :**

1. Appellant, the original accused in Sessions Case No.390 of 1992, has preferred this appeal against the judgment and order passed by the Court of Addl. Sessions Judge, Pune, whereby the accused was convicted for the offence punishable under section 302 of I.P.C. and sentenced to suffer imprisonment for life and to pay fine of Rs.200/- i.d. to suffer R.I. for two

months.

2. Brief facts giving rise to this appeal are as under :

. Complainant Balkrishna Nigade, his wife Sunita i.e. the present accused, their three children and Parvatabai the mother in law of the accused were residing at village Hargude, Taluka Pune. On the day of incident i.e. on 22.4.1992, complainant had gone to attend, the marriage of one Sanjay Takavale. Complainant's wife i.e. accused and their children and his mother were in the house. On that day, at about 12.30 midnight, complainant received information that his mother sustained burns. He therefore, immediately returned home. He found that several persons had gathered near their house On finding that his mother had sustained burn injuries, he made enquiry with her as to how she sustained burn injuries. Thereupon his mother Parvatabai told him that when she was sleeping in the front room, accused poured kerosen on her person and she was set on fire with lighted match stick. The injured

was therefore taken to Sasoon Hospital, Pune. After reaching there medico legal case was registered and intimation was given to J.M.F.C. No.5 for recording dying declaration of the injured. Accordingly, J.M.F.C. went to Sasoon hospital. He made enquiry with the doctor on duty about the health condition of the deceased. When he came to know that the patient was in a position to give statement he recorded the dying declaration of the deceased. Dr.Ashwini Phadke, P.W.6 also made endorsement on the said dying declartion. Injured, however succumbed to the burn injuries on 23.4.1992 at 11.15 a.m. Police therefore drew inquest panchanama. On that very day the complainant lodged complaint exhibit 10. Besides the abovementioned facts it was also mentioned in the complaint that accused Sunita used to quarrel with deceased by saying that she should reside seperately. The police registered the offence punishable under section 302 of I.P.C. and visited the place of offence, drew the panchanama exhibit 14 and attached the half burnt clothes which were found there. The attached property also sent to C.A. The C.A. reported

that half burnt clothes, in particular the quilt on which the deceased was lying was found containing kerosene residue. The police also recorded the statement of the witnesses including Narayan Takawale, who had first entered the house and had seen the deceased. After completion of investigation police submitted the chargesheet in the Court of J.M.F.C. Saswad, against the accused for the offence punishable under section 302 of I.P.C. Finding that the acused is chargesheeted for the offence which is exclusively triable by the Sessions Court, the learned J.M.F.C. commited the case to Sessions Court, Pune. The Additional Sessions Judge, Pune, framed charge exhibit 3 against the accused for the offence mentioned above. The charge was read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. Her defence was of total denial.

3. In order to prove the charge levelled against the accused, the prosecution examined as many as nine witnesses consisting of complainant-P.W.1. Balkrishna Nigade, exhibit 9,

husband of the accused, P.W.2 Narayan Takawalde, exhibit 11. the brother of the deceased, exhibit 11. P.W.3. Smt. Baby Takawale, the daughter of the deceased, P.W.4. panch Dinkarrao Takawale, P.W.5 Dr. Syed Abdul Sami, who did the post mortem, P.W.6 Dr. Ashwini Phadke, exhibit 19, Police Constable Ramdas Waykar, exhibit 22 who did the inquest panchanama and recorded the complaint, P.W.8 ASI Sambhaji Shinde, exhibit 31, who carried out the investigation and P.W.9. Kundalik Nagarare, exhibit 22 who recorded the dying declartion of the deceased. The prosecution also produced the panchanama of the place of offence exhibit 14, arrest panchanama exhibit 8, post mortem notes exhibit 17, dying declaration exhibit 20 and C.A. report exhibit 28.

4. After considering the entire prosecution evidence the trial court came to the conclusion that the oral as well as written dying declaration of the deceased was truthful and voluntary. So, relying on the dying declaration wherein the deceased had clearly stated that her daughter-in-law i.e. accused poured kerosene on

her person when she was sleeping and the accused set her on fire with lighted match stick. The learned trial Judge therefore held that the prosecution has proved the charge levelled against the accused and convicted and sentenced the accused as mentioned above.

5. Being aggrieved by the above mentioned order, the accused has preferred this Criminal appeal. In this appeal before us Shri Kuldeep Patil, learned Advocate for the accused has urged two points. Firstly, he submtited that as per the prosecution version, the accused set deceased on fire in the front room and when Narayan P.W.2 entered in the said room, it was noticed that the back door of the rear room was closed from inside and as a result of the same he was required to remove the plank and enter the said room. However, the said witness has nowhere stated that at the relevant time the accused was present in the said room. So, according to him, the prosecution has not adduced any evidence with regard to presence of the accused in the said room at the relevant time and as such it can not be

said that the prosecution has proved the charge levelled against the accused. Secondly, he canvassed before us that the dying declaration in the instant case can not be relied upon because the medical evidence on record indicates that at the relevant time deceased was infact not in such state of mind to make any statement. He, therefore, submitted that the trial corut has wrongly appreciated the evidence on record and has held that the prosecution has proved the charge levelled against the accused. He, therefore, submitted that the appeal be allowed and the accused be acquitted. As against this the learned APP Smt. Bhosale, supported the judgment and order passed by the trial court.

6. The relation between the accused and the deceased as well as the accused and P.W.1, 2 and 3 is not disputed. It is also an admitted fact that the deceased, accused, P.W.1. complainant Balkrishna and the children of the deceased were residing at village Hargude, Tal : Purandhar. It is also not in dispute that on the day of incident at about 12.30 midnight deceased was taken to

Sasoon Hospital, Pune and at that time she had sustained 90% burn injuries. It is also admitted that she succumbed to those injuries at about 11.15 a.m. and the doctor has opined that the death was caused due to shock due to burns.

7. The question arises, whether the said death was suicidal, accidental or homicidal. From the perusal of the record it is very clear that it is nowhere even suggested to any of the prosecution witnesses that the death of Parvatibai was suicidal. Infact, there is nothing to indicate that she was having any trouble or agony, as a result of which she was likely to commit suicide. An attempt was made on behalf of the accused to show that the death of Parvatibai may be accidental. When the adjoining neighboureres saw smoke coming out of the room, P.W.2. Narayan went to the house of the deceased. First he went from the front side, but he found that the door of the front room was bolted from inside and as such it could not be opened. He, therefore, went to the backside and tried to open the door of the rear room. However, the same could not be opened

easily but somehow he opened the said room. He found that the door which was inbetween the two rooms was also latched from the side of the rear room. He, therefore, removed the said latch and entered the front room. It was full of smoke and deceased was lying there and had sustained burns. If we peruse the panchanama of the place of offence we find that at that time no kerosene lamp was found in the front room. Kerosene can was found in the rear room. There was nothing to indicate that at the relevant time there was any burning kerosene lamp in the front room. So, there was no possibility of deceased sustaining injuries due to accident. So, we have no hesitation to hold that the death of Parvatibai was neither suicidal nor accidental.

8. Complainant, Balkrishna Nigade, exhibit 10, husband of the accused has stated that on that day at night he had gone to attend the marriage ceremony and at that time his children, accused and his mother were in the house. This statement of the complainant is not at all challenged in the cross examination. He has further stated that at

midnight he received a message that his mother has sustained burn injuries, and therefore he immediately rushed to his house. He found that his mother had sustained burns. He made querry with her and she told him query with his mother Parvatibai, she told him that her daughter in law i.e. acused poured kerosene on her person when she was sleeping in the front room and she was set on fire with lighted match stick. It is pertinent to note that P.W.3 Baby Takawalde, the daughter of deceased Parvatibai has also stated that at the relevant time when her brother made querry with Parvatibai as to how she sustained burns, Parvatibai told him that when she was sleeping in the front room, accused poured kerosene on her person and set her on fire and then deceased went in the kitchen i.e. the rear room. P.W.2. Narayan Takawale, the adjoining neighbourer who had gone to the place of incident first, has also stated that Parvatabai was saying that her daughter in law poured kerosen and set her on fire. It was also argued on behalf of the defence that all these three witnesses are interested witnesses and as such their testimoney should not

be accepted. However, it must be noted that the incident has taken place at midnight and when the neighboureres found that smoke was coming out of the house, witness Narayan Takawale who was residing adjacent to the house of the accused went there, so he was most natural witness. Merely because they happen to be close relatives of the deceased we can not jump to the conclusion that their testimony can not be accepted. It is also argued by the learned advocate for the accused that there was dispute between the deceased and the acused and as accused was insisting that deceased should reside seperately it was not liked by others and as such they must have implicated the accused falsely. Secondly, it was tried to be suggested that Balkrishna Nigade, husband of the accused wanted to marry one woman by name Jayeshree and as such they might have implicated the accused falsely. However, it is to be noted that immediately after the incident all these three witnesses have come out with a case that at the relevant time deceased Parvatibai told them that she sustained burn injuries as a result of the act committed by the accused. So when the

mother of the complainant had sustained such grave injuries it is very difficult to believe that within such short time he would hatch a plan to implicate the accused falsely. After all, we can not forget the fact that the accused is the wife of complainant Balkrishna Nigade. There are three children out of the said wedlock. There is nothing to indicate that the complainant Balkrishna Nigade was having any love affair with any other woman or even with one Jayeshree as tried to be suggested. So, under such circumstances, if really deceased Parvatibai would not have disclosed to him that accused poured kerosene on her person there was no reason for the complainant Balkrishna Nigade to rope the accused in the instant case. Under such circumstances there is no reason to accept the argument advanced by the learned advocate for the accused in this behalf.

9. Prosecution witness no.6 Dr. Ashwini Phadke has stated that on 23.4.1992 Parvatibai was admitted in Sasoon Hospital with burn injuries. She has stated that Parvatibai had sustained 90%

burn of second and third degree. When she asked the history to Parvatibai, she told her that when she was sleeping, her daughter-in-law i.e. accused poured kerosene on her person and she was set on fire. Accordingly, she has noted the history in the case paper. Dr. Ashwini Phadke is an independent witness. There is no reason to raise any suspicion about her testimony. The same is also not shaken or shattered in the cross examination. Relying on some of the admissions given by Dr. Ashwini Phadke in cross examination it is tried to be suggested that the injuries sustained by Parvatibai were to her neck, face, chest and she was not in fit condition to give any statement. It is true that Dr. Ashwini Phadke has stated that in such type of injuries there is possibility of deteriorating the condition of the patient and to have some further complications as suggested, but it does not mean that in such condition the patient would never be in a position to give statement. In fact there are several instances wherein though the patient had sustained 100% burns, the doctor who examined the patient had stated that the patient was in a position to

make statement and such evidence is accepted even by the Apex Court. For this proposition reliance can be placed on the case Suresh vs. State of Madhya Pradesh AIR 1987 SC 860. So merely because patient had sustained 90% burns one can not jump to conclusion that patient must not be in a position to give statement. There is nothing in the evidence of Dr. Phadke which will create any doubt about her testimony. So we alleged her evidence and hold that deceased had told her that accused sat her on fire.

10. There is another important evidence which also lends support to the prosecution version. The prosecution witness no.9, Kundlik Nagarare, Judicial Magistrate, First Class, Pune has stated that on 23.4.1992 that day at midnight he received requisition about recording dying declaration of the injured woman and he therefore went to Sasoon Hospital and he made query with doctor and when doctor opined that the patient was in a position to give statement, after confirming the said position he recorded the dying declaration of Parvatibai and at that time she told him that when

she was sleeping in the front room, her daughter-in-law poured kerosen on her person and set her on fire. The dying declaration exhibit 22 is duly proved by the prosecution. Witness Kundlik Nagarare has stated that it bears the thumb impression of the deceased. Merely because he himself has not made any endorsement regarding the physical condition of Parvatibai on the said dying declaration it can not be discarded, particularly when we find that the dying declaration exhibit 22 bears the endorsement and signature of Dr. Ashwini Phadke. It must also be noted that the said dying declaration is very short and is in the words of the maker. There is nothing to indicate that the same has been made under influence or it is the result of tutoring. In fact, the alleged incident has taken place at midnight at about 0.30 hours and thereafter dying declaration has been made within short time. So due importance and weightage has to be given to such dying declaration which is made soon after the incident. There was infact, no sufficient time to tutor Parvatibai. Besides this, there was no such grave dispute between accused and deceased

as well as the two and between the complainant and the accused which would prompt the complainant to tutor Parvatibai in such fashion. So, from the material on record we have no hesitation to held that the dying declaration in question is voluntary and truthful. It is well settled that if the dying declaration appears to be truthful and voluntary then conviction can be based even solely on the dying declaration.

11. It must also be noted that at the time of panchanama of the place of offence the police have attached the quilt and some other clothes which were found in the front room. The same were sent to C.A. and the C.A. has reported in exhibit 28 that kerosene residue was found on the said clothes. So this also corroborates story of deceased Parvatibai when she is deposing that accused poured kerosene on her person and then she was set on fire.

12. The learned advocate for the defence has drawn our attention to exhibit 30. It is the information received in the police station where

in it is mentioned therein that one Mukadam Rampal informed that on 23.4.1992 at 00.30 hours patient Parvatibai Nagade sustained burn injuries in her house, but cause of burns is not known and that she is admitted in the hospital. Firstly, it must be noted that who is Mukadam Rampal, is brought on record and he is also not examined. So, authenticity of this information is in doubt. Moreover, this exhibit 30 shows that the cause regarding burn injuries was not known. As against this in exhibit 29 which is also the information received by the police station, it is categorically mentioned that the J.M.F.C. has recorded the dying declaration of Parvatibai and therein she hasnamed her daughter-in-law i.e. accused. So, merely because of exhibit 30 we can not jump to the conclusion that the evidence on record is not sufficient to prove the guilt of the accused or that it raises any dount about the prosecution version. Thus, from the above discussion it is very clear that the trial court has rightly appreciated the evidence on record and has correctly held that the prosecution has proved that the accused poured kerosen on the person of

Parvatibai and set heron fire and thus committed her murder. There is no reason to interfere with the said finding. Hence the appeal is dismissed.

. The order of conviction and sentence passed against the accused in Sessions Case No.390 of 1992, by the Additional Sessions Judge, Pune is confirmed.

. The accused to surrender bail forthwith.

(S.S.Parkar, J.)

(S.R.Sathe, J.)

P.C:

. For the reasons recorded seperately the Court passes the following order :

. The appeal is dismissed. The order of conviction and sentence passed against the accused in Sessions Case No.390 of 1992 by the Additional Sessions Judge, Pune is confirmed.

. The accused to surrender bail forthwith.

(S.S.Parkar, J)

( S.R.Sathe, J)

( S.R.Swathe, J)